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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1473

VICENTE VILLAMOSA NAZARENO, *et al.*,
Petitioners,

v.

THE ATTORNEY GENERAL
OF THE UNITED STATES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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THE ATTORNEY GENERAL
OF THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia which affirmed a judgment of the District Court granting summary judgment to respondent and dismissing the complaint of petitioners.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A) is unreported and was filed on March 10, 1975. Its judgment of affirmance was filed on the same day.

The opinion of the District Court, filed on November 20, 1973, is unreported and is set forth in Appendix B.

JURISDICTION

The judgment of the Court below was entered on March 10, 1975. The jurisdiction of this Court is conferred pursuant to 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. The Immigration and Nationality Act of 1952, as amended, contains a definition of "child" requiring such child to be under 21. There is no definition of "son" or "daughter." Is a legally adopted son or daughter over the age of 21 a son or daughter under the statute and entitled to a preference classification under 8 U.S.C. 1153?

2. From 1953 to 1959 the Immigration Service interpreted the terms "son" and "daugher" to include relatives over 21 and all adopted children; from 1959 to 1965 a statutory amendment (Act of September 22, 1959; Public Law 86-363; 79 Stat. 66) was interpreted to preclude including in the term "son" and "daugher" those not adopted while under 14; and after 1965 when the Act of September 22, 1959 was repealed, the Immigration Service continued its 1959-1965 interpretation. Was the interpretation restricting the terms "son" and "daughter" to exclude adopted children over 14 despite the repeal of the statute which required such interpretation a construction authorized by Congress and consistent with judicial precedents [*Woodward v. United States*, 341 U.S. 112 (1951)] recognizing adopted children as equals with those by blood?

3. Is it proper to interpret such clear and unambiguous terms as "son" and "daugher" to restrict them to deny inclusion of adopted persons over 14 years of age?

STATUTE INVOLVED

Section 203(a) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1153) provides in part:

> "(1) Visas shall be first made available in a number not to exceed 20 per centum of the number specified in Section 201(a)(ii) to qualified immigrants who are the unmarried sons or daughters of citizens of the United States."

Section 204 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1154) provides in part:

> "Any citizen of the United States claiming that an alien is entitled to a preference status by reason of relationships described in paragraphs (1)(4) or (5) of Section 203(a)***may file a petition with the Attorney General for such classification."

STATEMENT

Petitioners, Fe Nazareno and Enrique Templora Targa are both 33-year-old unmarried aliens, who were legally adopted pursuant to judicial decrees of the States of Maryland and California in 1970 and 1972.[1]

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[1] Not all states permit adoption of adults. *Anno.* Statute in relation to adoption as authorizing adoption of adult, 83 A.L.R. 1395.

Petitions were filed on their behalf by their adoptive parents, petitioners herein Vicente Villamosa Nazareno and Lucille Marie Shelton, under 8 U.S.C. 1153 and 1154 to classify them as a daughter and son respectively under the Immigration and Nationality Act of 1952, as amended. These petitions were denied upon the ground that their ages disqualified them from such classification. This litigation sought review of these denials.

The facts are not in dispute and the matter was presented to the District Court upon cross motions for summary judgment and the respondent's motion to dismiss. The District Court in an opinion and order (Appendix B) ruled that the interpretation of the Immigration and Naturalization Service was not unreasonable. Upon this basis, respondent's request for summary judgment was granted and the complaint was dismissed. The Court of Appeals affirmed. Finding an ambiguity in the statute, the Court of Appeals concluded that the present administrative interpretation denying recognition as a son and daughter to persons adopted after the age of 14, was entitled to great weight and should be sustained (Appendix A).

I

STATUTORY DEVELOPMENT AND APPLICABLE ADMINISTRATIVE DECISIONS

The 1952 Immigration and Nationality Act, as amended, utilizes the terms "child," "son" and "daughter."

Western Hemisphere natives and their children are special immigrants chargeable to a quota of 170,000. 8 U.S.C. 1101(a)(27), 1151. A child may be chargeable to the quota of a parent 8 U.S.C. 1152(b). Special provisions are made for the naturalization of natural or adopted

children, 8 U.S.C. 1431-1424. The term child is defined as an unmarried person under 21 [8 U.S.C. 1101(b)(1)]. It includes by express language, stepchildren, legitimate, illegitimate children of a mother and children adoped while under the age of 14.

Sons and daughters of American citizens if unmarried may be classified as first preferences under quotas 8 U.S.C. 1153(a)(1). Sons and daughters of legal residents if unmarried may be classified as second preferences. 8 U.S.C. 1153(a)(2). The statute does not define the terms "sons" or "daughters." There is no express indication whether these terms include the illegitimate, the stepson and daughter nor those who have been adopted. It is clear, however, that the son or daughter relationship exists regardless of the age of the person.

As *Matter of R*, 5 I&N, Dec. 438 (1953) observed:

> "It is obvious that the term 'son' and 'daughter' is not limited or circumscribed by the definition of a 'child' and it is clear that the terms used in Section 203(a)(4)[2] are indicative of a relationship different than that existing between a child and a parent*** A son or a daughter is not restricted by any age limit and of course, includes children under 21 years of age and over 21 years of age*** Adoption is usually regarded as creating the same relationship between the adoptive parent and the adopted child as between a natural parent and his child."

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[2] 66 Stat. 178-179.

Public Law 85-316 amended Section 101(b)(1)(E) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(E), on September 11, 1957, to require adoption for a *child* to occur while under the age of 14 and to be followed by two years of custody. This was not interpreted to alter the definition of the terms "son" or "daughter."

When the Act of September 22, 1959, was passed, it was construed to alter the definition of son or daughter as set forth in *Matter of R, supra. Matter of P,* 8 I&N, Dec. 527 (1960) and *Matter of A,* 9 I&N, Dec. 67 (1960) so construed the 1959 Act. These cases ruled that *Matter of R* has no prospective effect after September 22, 1959. The Act of September 22, 1959 (Public Law 86-363; 79 Stat. 644) provided, in part (Section 5(a)):

> "No petition for quota immigrant status or a preference in behalf of a son or daughter under paragraph (2), (3) or (4) of Section 203(a) of the Immigration and Nationality Act shall be approved by the Attorney General unless the petitioner establishes that he is a parent as defined in Section 101(b)(2)[3] of the Immigration and Nationality Act of the alien in respect to whom the petition is made***."

The legislative history of this amendment indicated a Congressional desire to consider adopted persons ineligible for visas unless they qualified as children. *Senate Report 962,* 86th Congress, 1st Session, p. 7; *Matter of P,* 8 I&N Dec. 527 (1960); *Matter of A,* 9 I&N Dec. 67 (1960). In the light of this 1959 amendment and solely because of its language and history, *Matter of R* was said to no longer represent applicable law.

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[3] 8 U.S.C. 1101(b)(2).

On October 3, 1965, Congress enacted Public Law 89-236, 79 Stat. 911 reconstituting the preferences. Omitted from the new legislation was Section 5(a) of the 1959 Act. No longer was the Attorney General precluded from approving petitions for adopted sons and daughters who did not qualify as children under 101(b)(1)(E) [8 U.S.C. 1101(b)(1)(E)].

The Conference Report, House Report No. 1101, 89th Congress, 1st Sess, p. 14 (2 U.S. Code Cong. Administrative News, 89th Cong. 1st Sess, p. 3353) does not illuminate the intent of Congress in its omission of the limitation imposed by the 1959 Act. It states that with regard to Section 4 of the bill (8 U.S.C. 1154) and its provisions authorizing consuls and immigration officials to administer an oath, that the provision conforms to existing law. The full text of Conference Report 1101 states:

> "The conferees have agreed to provide in Section 4 of the bill that immigration officers as well as consular officers may administer oaths outside the United States. *This Section conforms with existing law.*"

Despite the change in the 1965 amendment omitting the requirement of the 1959 Act specifying that a parent of all persons, children as well as others (*i.e.*, sons or daughters) be restricted to 8 U.S.C. 1101(b)(2), the Board of Immigration Appeals ruled in *Matter of Caramanzana*, 12 I&N Dec. 47 (1967) that the omission made no difference. This, it is submitted was legally unsound and an unwarranted interpretation in the form of administrative legislation. Upon this basis, the classifications sought herein by petitioners have been denied.

II

REASONS FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

1. The decision below is of great importance and wide application in the administration of the immigration and nationality laws. It will affect not only adopted children but also legitimated children as well as brothers and sisters of American citizens. If adoption must occur when under 21, a similar requirement will be required for legitimated[4] sons and daughters and those claiming other family relationships under our immigration laws.[5]

2. The decision below is in conflict with decisions of this Court permitting and recognizing administrative interpretation only where a statute is ambiguous or where implementation is permitted. *Udall v. Tallman*, 380 U.S. 1 (1964); *Power Reactor Co. v. Electricians*, 367 U.S. 396, 408 (1961); *Norwegian Nitrate Products Co. v. United States*, 288 U.S. 294, 314 (1933); *Louisville & N.R.R. Co. v. United States*, 282 U.S. 740, 757 (1931). A statute utilizing the terms "son" and "daughter" is not ambiguous and the restrictive administrative interpretation sustained below is not warranted by the statute or decisions of this Court. *Texas and P.R.R. Co. v. United States*, 289 U.S. 627, 640 (1933).

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[4] Legitimation of a daughter 23 years of age has been refused recognition to create a sister relationship under the immigration statute based on the ruling in the instant case. *Matter of Garner*, A20, 253, 948 (March 20, 1975).

[5] Parents, sons, daughters, brothers and sisters are entitled to quota benefits under the immigration statute 8 U.S.C. 1151; 1153(a)(1), (2), (4), (5).

3. The decision below refusing to recognize adopted sons and daughters in the same way those by blood are recognized is contrary to the views of this Court, *Woodward v. United States*, 341 U.S. 112 (1951), to decisions of other circuits, *Carpenter v. United States*, 168 F.2d 369, 372 (3rd Cir., 1948); *Baskin v. Montedonico*, 115 F.2d 837 (6th Cir., 1940), and contemporaneous legal treatment of adopted children as though born into the family.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

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APPENDIX A

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1148

VICENTE VILLAMOSA NAZARENO, ET AL., APPELLANTS

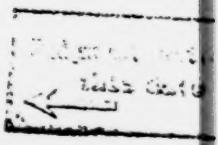
v.

ATTORNEY GENERAL OF THE UNITED STATES

Appeal from the United States District Court for the District of Columbia

(D.C. Civil 970-73)

Decided March 10, 1975



Mark A. Mancini with whom *Jack Wasserman* and *Benjamin M. Parker* were on the brief for appellants.

Richard I. Chaifetz, Attorney, Department of Justice, for appellee.

Before: LEVENTHAL and ROBINSON, *Circuit Judges* and MARKEY,* *Chief Judge* for the United States Court of Customs and Patent Appeals

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* Sitting by designation pursuant to 28 U.S.C. § 293(a).

Opinion for the Court filed by *Circuit Judge* LEVENTHAL.

LEVENTHAL, *Circuit Judge*: Appellants, Fe Nazareno and Enrique Templora Targa, are unmarried adult aliens who were adopted pursuant to state judicial decrees in 1970 and 1972 respectively.[1] The Immigration and Naturalization Service denied petitions filed by their adoptive parents to classify them as the daughter and son of United States citizens for purposes of qualifying under the first preference classification of 8 U.S.C. § 1153 (1970). Following unsuccessful efforts before the Board of Immigration Appeals, appellants filed an action for declaratory judgment and for review in the United States District Court for the District of Columbia. The District Court granted the defendant's motion for summary judgment and dismissed the complaint.

The sole question presented on appeal is the validity of the Board of Immigration Appeals' interpretation of section 203(a)(1) of the Immigration and Nationality Act of 1952. 8 U.S.C. § 1153(a)(1) (1970). That section provides:

> Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 1151(a)(ii) of this title, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

The Board ruled that "sons or daughters" in section 203(a)(1) does not include an adopted person who is excluded from the definition of child in section 101(b)(1)

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[1] *See* Memorandum and Order, Civ. Action No. 970-73 (D.D.C., Nov. 20, 1973) (App. 10). Appellants were both 32 years old at the time of the District Court decision.

(E).[2] It thus ruled that the phrase excluded a person adopted at or over the age of 14, or one adopted under the age of 14 who has not thereafter been in the legal custody of or resided with the adopting parents for at least two years.[3] In essence the Board concluded that a boy or girl could not be a "son" or "daughter" of a United States citizen parent under section 203 if he or she could not previously have been that citizen's "child" under section 101 of the Act.[4]

We find that the Board's ruling rests on a reasonable interpretation of the statute and affirm the District Court's grant of summary judgment to the defendant.

I. BACKGROUND

The Immigration and Nationality Act of 1952 established a system of immigrant selection based on national

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[2] Section 101(b)(1)(E), 8 U.S.C. § 1101(b)(1)(E) (1970):

> (b) As used in titles I and II—
>
> (1) The term "child" means an unmarried person under twenty-one years of age who is—
>
> * * * *
>
> (E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or statue under this Act. [; or]

[3] *See In re* Nazareno, File No. A17-743-260 (B.I.A., Mar. 29, 1973) (App. 4-5); *In re* Targa, File No. A19-165-560 (B.I.A., Mar. 30, 1973) (App. 6-7)

[4] This conclusion may rest on a reading of the Act which harmonizes the meanings of son, daughter, parent, and child or on a view of the meaning of adoption for purposes of the immigration laws. *See* discussion at and immediately preceeding note 22 *infra*.

origin quotas. As a general matter, the system allocated a yearly immigration total among non-Western Hemisphere nations according to a quota for each country derived from the percentage of the 1920 United States population tracing its origin to that country.[5] The immigrant visas assigned to each country were allotted to qualified quota applicants according to their preference classification. Under the 1952 statute sons or daughters of citizens of the United States were entitled to fourth preference.[6] A child of a citizen of the United States, as defined in section 101(b)(1), was a nonquota immigrant who could enter the United States without regard to the number of visas assigned his country of origin.[7]

The original Act contained no definition of son or daughter and made no reference to adopted individuals in the definition of "child." In *Matter of R* in 1953 the Board held that an alien adopted at age 24 was entitled to a fourth preference status as a "son" even though he would not, prior to 21, have been in the class of person entirely exempt from the quota system because included within the definition of a "child."[8] A few months after that decision, the Board held in *Matter of C* that a 21-year-old stepdaughter could not qualify as a "daughter."[9] It reasoned that since the term child

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[5] *See* 8 U.S.C. §§ 1151, 1152 (1964), *as amended* (1970). A major exception to the national origin quota system was the severe limitation placed on the number of visas allocated to aliens from "areas within the Asia-Pacific triangle."

[6] *See* Section 203(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1153(a) (1952), *as amended* (1970).

[7] *See* Section 101(a)(27)(A) of the Immigration and Nationality Act of 1952, 66 Stat. 169 (1953).

[8] *See* 5 I&N Dec. 438, 439 (B.I.A. 1953).

[9] *See* 5 I&N Dec. 512 (B.I.A. 1953).

included a definition of a stepchild the "failure to so define the term 'daughter' . . . leads to the inference that such omission was . . . intended to confine the term 'daughter' to an actual blood relative." [10]

In 1957, Congress amended the Act to include within the statutory definition of "child" in section 101(b)(1)(E)—which meant an entitlement to entry without regard to quota—minors adopted under the age of 14 who thereafter resided with or were in the legal custody of their adopting parents for at least two years.[11] No change was made in section 203(a)(4) pertaining to the preference status of sons and daughters of United States citizens. In 1959, Congress again amended the Act improving the preference status of unmarried sons and daughters, but limiting the second, third, and fourth preferences to sons and daughters who, prior to reaching age 21, would have qualified as a "child" of the petitioning parent.[12] This amendment had the effect of overruling *Matter of R.*

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[10] *See id.*

[11] *See* Section 101(b)(1)(E), 8 U.S.C. § 1101(b)(1)(E) (1970). The provision is set forth in note 2 *supra.*

[12] The 1959 amendment extended the second and third preferences to unmarried sons or daughters of United States citizens and of aliens lawfully admitted for permanent residence, respectively. It also added the following language to section 205(b) of the Act:

> No petition for quota immigrant status or a preference in behalf of a son or daughter under paragraph (2), (3), or (4) of section 203(a) of the Immigration and Nationality Act shall be approved by the Attorney General unless the petitioner establishes that he is a parent as defined in section 101(b)(2) of the Immigration and Nationality Act of the alien in respect to whom the petition is made.

Act of September 22, 1959, § 5(a), 73 Stat. 644.

The present controversy arises from the ambiguity created by the 1965 amendment to the Act. The primary objective of the 1965 revisions was to replace the national origin quota system with a system which allocates a total of 170,000 visas per fiscal year on the basis of preference category and application date subject to a maximum 20,000 visas per country.[13] The revision replaced the old preference designations with a nine category system which promoted unmarried sons and daughters of United States citizens from the second to the first preference. The portion of the 1965 amendments restructuring the preference classifications omitted the section added in 1959 which defined sons and daughters in terms of a parent-child relationship. As a result, the Act presently includes a reference to adoption in the definition of child, a definition of parent dependent on the term child, and no definition of son or daughter.

Subsequent to the 1965 amendment, the Board rendered its decision in *Matter of Caramanzana* which denied an alien adopted at age 21 preference status as an "unmarried daughter." [14] It found that the criteria set forth in section 101(b)(1)(E) concerning an adopted child had to be satisfied for an applicant "to be considered adopted for immigration purposes" and stated that the "failure to specifically reenact" the 1959 provision did not serve as an "indication that any change was intended" by Congress.[15] In the present cases, the Board reaffirmed its position stating that "aliens adopted by United States citizens are not eligible for preference

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[13] *See* 8 U.S.C. §§ 1151, 1152 (1970); S. REP. NO. 748, 89th Cong., 1st Sess. 10 (1965).

[14] 12 I&N Dec. 47 (B.I.A. 1967).

[15] *Id.* at 48.

status as a 'son' or 'daughter' unless they were adopted in conformity with Section 101(b)(1)(E)." [16]

II. MERITS

Textual considerations

If one were to look at the current statute afresh, one would find it entirely natural to suppose that a statute using terms like "child," "son," "daughter," and "parent," used them in an interrelated way, and did not contemplate that a person who was ineligible to qualify as a "child" of a "parent" would at the same time be eligible as a "son" or "daughter."

The specificity of Congress in excluding a person adopted over the age of 14 from the category of "child" may be taken, therefore, as a likely legislative direction that such person would be excluded from the category of "son." A possible ambiguity arises from the difference in consequences (a "child" having a more favored status than a "son") and from legislative history. We turn to the legislative history to see whether this provides an ascertainable legislative intent that the terms "son" and "child" be defined differently as to adopted persons.

Legislative History

What raises a question here is the fact that in 1959, there was a provision that restricted the terms "sons" and "daughters" to "parent-child" relationships, and that this section was removed in 1965. An ambiguity arises from the absence of explicit legislative history as to the purpose of the deletion.[17] The omission may have been

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[16] *See In re* Nazareno, *supra* note 3, (App. 5); *In re* Targa, *supra* note 3, (App. 7).

[17] *Cf.* Rosenberg v. Yee Chien Woo, 402 U.S. 49, 54-55 (1971) (discussing the omission of the words "firmly reset-

inadvertent, or merely stream-lining of the superfluous, that even without an express provision it was obvious that the specifically limited recognition of adoption for a "child" would be applicable to a "son" or "daughter." However, it is arguable that Congress may have intended to sever the link between the terms "sons and daughters" and "parent and child" through its unexplained deletion of the 1959 provision.

We noted in a recent opinion that in construing ambiguous statutes "Supreme Court decisions counsel us to show 'great deference to the interpretation given to the statute by the officers or agency charged with its administration.' " [18] Here the Board's interpretation deserves great weight because it represents both "a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in mo-

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tled" from the requirements for qualification under the seventh preference classification).

The Administration bills introduced in the 88th and 89th Congresses left intact the 1959 provision defining son and daughter in terms of a parent-child relationship. The deletion of that provision in 1965 is traceable to a bill introduced by Representative Feighan that was the source of the quota system adopted by the House and subsequently enacted into law. Legislative discussion of the Feighan bill does not indicate the purpose, if any, of this deviation from the Administration proposal. However, the fact that the Feighan bill, H.R. 8662, proposed to eliminate the numerical limitation on unmarried sons and daughters (placing them on a par with spouses and children) suggests that its omission of the 1959 definition of sons and daughters was not intended to broaden the scope of those terms to take account of the distinction between nonquota and first preference status. *See* text accompanying note 23 *infra*.

[18] *See* NRDC v. Train, No. 74-1433, Slip op. at 26 (D.C. Cir., Dec. 5, 1974), *quoting* Udall v. Tallman, 380 U.S. 1, 16 (1965).

tion"[19] and the "uniform practice of the authorities" maintained consistently since Congress inserted the language limiting adoptions for "child" status.[20] We are required to sustain a construction adopted by the Board if it is reasonable and not contrary to the discernible intent of Congress, even if it is not "the only reasonable" interpretation of the Act.[21]

Several considerations point to the reasonableness of the challenged interpretation. First, the Board's decision harmonizes the undefined terms, sons and daughters, with the statutory meaning of parent and child. It avoids the curious situation in which a person who was never capable of being a "child" of his or her parents may nonetheless be their "son" or "daughter." Second, the Board's reasoning in *Matter of Caramanzana* regarding persons considered adopted for immigration purposes parallels, though does not rely upon, state court decisions we have surveyed which generally construe statutes referring to the adoption of a "minor child" as excluding the

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[19] *See* Power Reactor Development Co. v. International Union of Electricians, 367 U.S. 396, 408 (1961), *quoting* Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294, 315 (1933). The 1967 decision in *Matter of Caramanzana, supra* note 14, constitutes a contemporaneous construction of the first preference classification of the new visa system adopted by Congress in 1965.

[20] *See* Louisville & N.R.R. v. United States, 282 U.S. 740, 757 (1931). The Board has followed its present interpretation of the terms "son" and "daughter" since its 1960 decision in *Matter of P*, 8 I&N Dec. 527 (B.I.A. 1960), and has consistently interpreted those terms as used in the present first preference provision adopted in 1965.

[21] *See* Unemployment Comm'n v. Aragon, 329 U.S. 143, 153 (1946).

adoption of adults.[22] Third, the Board's ruling is consistent with its decision in *Matter of C* considered in conjunction with the 1957 amendment expanding "child" to include certain adopted children. When *Matter of R* was decided, the Board had more latitude because there was nothing in the statutory provisions that specifically signified a legislative intention to exclude or restrict the eligibility of adopted persons. The provision adding section 101(b)(1)(E) in 1957 is a constraint on such latitude.

Finally, the Board's limitation on preferences open to persons adopted after age 14 avoids the use of adoption as a fraudulent means of gaining improved immigration status, especially since many such adoptions, and certainly adult adoptions, do not result in either legal obligations or a living relationship among the parties conducive to rooting out fraud. The avoidance of fraud was likely a reason for the limitations on adoption in the 1957 amendment. Congress could have chosen to cope with the fraud problem by providing means for investigation, but that would have imposed a substantial burden on the system.

It is conceivable as appellants argue that Congress intended to draw a tight classification for the nonquota status accorded children, and to provide a more liberal category for the first preference quota status of unmarried sons and daughters. But no such distinction appears in the legislative history. If anything, the legislative history of the 1965 amendment indicates that the statutory rearrangement was not intended to make any substantial change as to adopted persons.[23] In these

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[22] *See* 12 I&N Dec. 47, 48 (B.I.A. 1967); Annot., 21 A.L.R. 3d 1012, 1016, 1022-23 (1968); 2 AM. JUR.2d *Adoption* § 11, at 868 (1962).

[23] *See* note 17 *supra*. The 1965 amendments focused primarily on the replacement of the national origin quota sys-

circumstances we decline to overrule an interpretation by the Board which we cannot say was either unreasonable or contrary to discernible legislative intention.

Affirmed.

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tem. *See* text accompanying note 13 *supra*. Although the preference status of unmarried sons and daughters of United States citizens was modified and the 1959 express limitation was omitted in 1965, Congress retained section 101(b)(1)(E)'s definition of adopted child as the sole statutory reference to adoption.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

* * * * *

MEMORANDUM AND ORDER

Plaintiffs Fe Nazareno and Enrique Templora Targa are both 32 year old unmarried aliens, who were legally adopted pursuant to judicial decrees of the States of Maryland and California in 1970 and 1972. Petitions were filed on their behalf by their adoptive parents under 8 U.S.C. 1153, 1154, to classify them as a daughter and a son, respectively under the Immigration and Nationality Act of 1952, as amended (Act). These petitions were denied on the ground that, since the petitioners were not adopted until they were 30 and 32 years of age, respectively, they did not fulfill the age requirement of Section 101(b)(1)(E) of the Act, 8 U.S.C. 1101(b)(1)(e), and could not be classified as "daughter" and "son", respectively, as those terms are used in Section 203(a)(1) of the Act, 8 U.S.C. 1153(a)(1).

The plaintiffs seek a judgment setting aside the orders of the Board of Immigration Appeals (Board) which sustained the District Director's refusals to approve their petitions. The defendant has filed a motion to dismiss or, alternatively, for summary judgment, and the plaintiffs' motion for summary judgment stands in opposition to that motion.

The scope of this Court's judicial review in cases of denial of preference classification is limited to a determination as to whether the Board misapplied the statute or abused its discretion in affirming the District Director's decisions. This Court will not substitute its judgment for that of the Attorney General, nor make findings of facts. *Kam Ng v. Pilliod,* 279 F.2d 207, 210 (7 Cir., 1960), cert. den., 365 U.S. 860 (1961); *Jaricha v. Immigration and Naturalization Service,* 417 F.2d 220 (5 Cir., 1969); 8 U.S.C. 1105(a). *Butterfield v. Attorney General,* 143 U.S. App. D.C. 152, 442 F.2d 874 (1971), cited by plaintiffs in this regard, is distinguishable. There the Immigration and Naturalization Service (I.N.S.) demanded more than the statute propounded, and the Court granted relief on the grounds that the reason for the denial of the visa had nothing to do with the statutory requirements; here we are dealing with the very interpretation of the statute itself. The scope of this Court's review, therefore, is to the law and not to the facts, 5 U.S.C. 706.

Prior to 1959, there was no definition of the terms "son" or "daughter" as those terms are used for immigration purposes under the Act, 8 U.S.C. 1153(a)(1), but was interpreted, in the absence of clear Congressional intent, to include adopted sons and daughters without the limitations placed on the term "child" by Section 101(b)(1) of the Act. 8 U.S.C. 1101(b)(1). *Matter of R,* 5 I & N Dec. 438 (1953). However, in 1959, in amending Section 205-(b) of the Act, Congress, in describing the procedure to

be followed by the Attorney General in approving immigration visas, set forth its intent and interpretation by limiting the terms "son" and "daughter" by the term "parent" as found in Section 101(b)(2) of the Act, 8 U.S.C. 1101(b)-(2), which is in turn, limited by Section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1). A "son" or "daughter" for immigration purposes, therefore, if adopted, must be found to lie within Section 101(b)(1)(E) of the Act, *i.e.*, that for immigration purposes the adoption must take place while the child was under the age of 14 years and must have resided with and have been in the custody of the adopting parent or parents for at least two years thereafter. P.L. 86-363, 73 Stat. 644, 1959 U.S. Code Cong. and Adm. News, p. 724. The Board held that this amendment overruled its prior decision in *Matter of R, supra; Matter of P,* 8 I & N Dec. 507 (1960); and it has subsequently interpreted the terms "son" and "daughter" in reference to Section 101(b)(1), 8 U.S.C. 1101(b)(1). *Matter of Caramanzana,* 12 I & N Dec. 47, 48 (1967). In 1965, Congress replaced the national origin quota system with the current system. P.L. 89-236, 79 Stat. 911, 1965 Code Cong. and Adm. News, p. 883. In the course of this change, revising chapter 1 of title 2 of the Act, Congress eliminated the portion of Section 205(b) referred to above. Plaintiffs contend that this action on the part of Congress, indicated an intent on the part of Congress to re-establish the rule of *Matter of R, supra.* This Court does not so construe the action of Congress.

The omission of language previously used does not necessarily indicate a change in the intent of Congress. *Rosenberg v. Yee Chin Woo,* 402 U.S. 49 (1971). In the 1959 amendment to the Act, Congress was setting forth procedures that petitioners and the Attorney General should follow in regard to immigrant visa applications, and within

this scheme Congress indicated its intent concerning the meaning of the terms "son" and "daughter." In 1965, Congress changed the entire system regarding the allocation of immigrant visas, eliminating the national origin quota system in behalf of a "new system of allocation based on a system of preferences which extends priorities in the issuance of immigrant visas to close relatives of U.S. citizens and aliens lawfully admitted for permanent residence . . ." S. Rep. 748 (89th Cong., 1st Sess., 1965), 1965 U.S. Code Cong. and Adm. News, p. 3329. In other words, in changing the system, Congress was altering the procedures to be followed in allocating immigrant visas. This change of procedure can in no way be taken to import a change in the meaning of terms within the statute itself without such being so indicated. Nor is there any indication that such change was intended. In 1959, Congress specifically and intentionally indicated the meaning it attached to the terms "son" and "daughter." It would be illogical to conclude that Congress, by a single omission, would reverse its intention in this matter without so much as indicating its intent to do so, especially when the matter under amendment was the system itself; nor, since 1959, has Congress given any indication that the interpretation given by the I.N.S. is contrary to its purpose. Therefore, deference must be given to the interpretation given the statute by the officers or agency charged with its administration, *Udall v. Tallman*, 380 U.S. 1 (1964), reh. den., 380 U.S. 989; nor must its construction be the only reasonable one. *Unemployment Commission v. Aragon*, 329 U.S. 143, 153 (1946). "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion. . . .'" *Power Reactor Co. v. Electrician*

367 U.S. 396, 408 (1961). This Court concludes that I.N.S.'s interpretation of the terms "son" and "daughter" as used for immigration purposes under Section 203(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1153(a)-(1), is not unreasonable.

WHEREFORE, it is this 20th day of November, 1973,

ORDERED that:

1. Defendant's motion for summary judgment be and the same is hereby granted;

2. Plaintiffs' motion for summary judgment be and the same is hereby denied; and

3. This action be and the same is hereby dismissed.

/s/ WM. B. JONES
JUDGE

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1473

VICENTE VILLAMOSA NAZARENO, ET AL., PETITIONERS

v.

EDWARD H. LEVI, ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 512 F. 2d 936. The memorandum and order of the district court (Pet. App. 12a-16a) is reported at 366 F. Supp. 1219.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 1975. The petition for a writ of certiorari was filed on May 23, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

8 U.S.C. 1153 (a)(1) provides in pertinent part:

> Aliens who are subject to the numerical limitations * * * of this title shall be allotted visas * * * as follows:
>
> (1) Visas shall be first made available * * * to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

8 U.S.C. 1101(b)(1)(E) provides in pertinent part:

> (1) The term "child" means an unmarried person under twenty-one years of age who is—
>
> * * * * *
>
> (E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years * * * .

8 U.S.C. 1101(b)(2) provides:

> (2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection.

QUESTION PRESENTED

Whether the Board of Immigration Appeals properly concluded that the terms "sons or daughters," as used in 8 U.S.C. 1153(a)(1) of the Immigration and Nationality Act, does not include an adopted person who is excluded from the definition of "child" in 8 U.S.C. 1101(b)(1)(E) of the Act.

STATEMENT

Petitioners Fe Nazareno and Enrique Templora Targa, adult citizens of the Philippines, sought to secure immigrant visas through adoption by American citizens. Fe Nazareno was adopted by petitioners Vicente Villamosa Nazareno and Trinidad Miguelino Nazareno on April 1, 1971, when she was 31 years old. Enrique Templora Targa was adopted by petitioner Marie Louise Shelton on June 29, 1972, when he was 32 years old. The adoptive parents then filed petitions with the Immigration and Naturalization Service requesting first preference classifications for immigrant visas for Fe and Enrique under 8 U.S.C. 1153(a)(1).[1]

The petitions were denied by district directors of the Immigration and Naturalization Service. On appeal, the Board of Immigration Appeals affirmed, holding that one who could not have qualified as an adopted child under Section 1101(b)(1)(E) before reaching the age of 21 could not thereafter qualify for a first preference as an adult son or daughter under Section 1153(a)(1). Since petitioners were adopted long after their twenty-first birthdays, they were found not qualified.

Petitioners then filed a complaint in the United States District Court for the District of Columbia seeking a declaratory judgment. The court granted the government's motion for summary judgment and dismissed the complaint. The court of appeals affirmed in a comprehensive opinion on which we rely (Pet. App. 1a-11a).

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[1] 8 U.S.C. 1153(a)(1) constitutes the highest priority preference and is available to otherwise "qualified immigrants who are the unmarried sons or daughters of citizens of the United States." This so-called "first preference" is primarily useful for adult unmarried sons and daughters of American citizens because, under Section 1151(a) and (b) of the Act, offsprings under the age of twenty-one and who otherwise meet the definition of "child" in Section 1101(b)(1) may be admitted without regard to quota limitations.

ARGUMENT

Petitioners claim that the Board of Immigration Appeals erroneously construed the terms "sons or daughters" under Section 1153(a)(1) of the Immigration and Nationality Act. While the Act does not provide an explicit definition of the terms, the Board's construction—that one may not be considered an adult son or daughter under Section 1153(a)(1) of the Act unless he or she previously could have qualified as a "child" under Section 1101(b)(1)(E)—was reasonable and consonant with the overall purpose of the statute and its legislative history.

1. The Board's interpretation harmonizes the undefined terms "sons or daughters" with the explicit statutory definition of "child" in Section 1101(b)(1). As the court of appeals stated: "The specificity of Congress in excluding a person adopted over the age of 14 from the category of "child" may be taken * * * as a likely legislative direction that such person would be excluded [also] from the category of 'son'" (Pet. App. 7a). Such a reading of the statute "avoids the curious situation in which a person who was never capable of being a 'child' of his or her parents may nonetheless be their 'son' or 'daughter'" (*id.* at 9a). The Board's interpretation also is consistent with the statutory definition of "parent." Under 8 U.S.C. 1101(b)(2), a person is considered a parent only if his or her offspring is a "child" as that term is defined in Section 1101(b)(1).

Moreover, the construction placed upon the Act by the Board serves to preserve the integrity of the immigration system. As the court of appeals stated (Pet. App. 10a):

> [T]he Board's limitation on preferences open to persons adopted after age 14 avoids the use of adoption as a fraudulent means of gaining improved immigration status, especially since many such adoptions, and certainly adult adoptions, do not result in either legal obligations or a living relationship among the parties * * *.

2. The legislative history of the Immigration and Nationality Act does not suggest a contrary conclusion from that reached by the Board. The original 1952 Act did not define "son" or "daughter," nor did it provide for adopted individuals in its definition of "child" in Section 1101(b)(1). See 66 Stat. 171. In an early decision, the Board of Immigration Appeals held that an alien adult adopted at age 24 could receive a preference as an adult "son" within the meaning of the statute even though he could not have obtained the nonquota status of a "child" before reaching the age of 21. See *Matter of R*, 5 I. & N. Dec. 438. In 1957, the Act was amended to provide the current definition of adopted child found in Section 1101(b)(1)(E). See 71 Stat. 639. In 1959, the Act was again amended, by improving the preference status for sons and daughters.[2] However, at the same time, an amendment was added that limited the preferences accorded such sons and daughters to those who could have qualified as "child[ren]" under Section 1101(b)(1). See 73 Stat. 645, 8 U.S.C. (1964 ed.) 1155(b).[3] This amendment overruled the Board's previous position in *Matter of R*. See Pet. App. 5a.

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[2]Under the original 1952 Act, unmarried sons or daughters of American citizens enjoyed only a fourth preference. Under the 1959 amendment, they were granted a second priority preference, and with the 1965 amendments to the Act, they were accorded a first preference.

[3]The amendment read:

> No petition for quota immigrant status or a preference in behalf of a son or daughter under paragraphs (2), (3), or (4) of section 203(a) [8 U.S.C. (1964 ed.) 1153(a)] of the Immigration and Nationality Act shall be approved by the Attorney General unless the petitioner establishes that he is a parent as defined in section 101(b)(2) [8 U.S.C. (1964 ed.) 1101 (b) (2)] of the Immigration and Nationality Act of the alien in respect to whom the petition is made.

In 1965, the Act was again revised. The portion of the 1965 amendments restructuring the preference classifications omitted the section, added in 1959, which defined sons and daughters in terms of a parent-child relationship. As the court of appeals observed, however, it was not likely that Congress intended by this unexplained omission to broaden the definition of "sons or daughters." See Pet. App. 8a, n. 17. Particularly is this so in light of the fact that under the new enactment a parent still is defined in Section 1101(b)(2) as one whose offspring was a "child" as defined in Section 1101(b)(1). Subsequent to 1965, the Board of Immigration Appeals consistently has held that the omission of the 1959 amendment in 1965 did not reflect a change of congressional purpose. See *Matter of Caramanzana*, 12 I. & N. Dec. 47; see also 1 Gordon and Rosenfield, *Immigration Law and Procedure*, §2.27b, pp. 2-120 to 2-121 (1975).

3. In view of this legislative history, the Board's construction of the term "sons or daughters" is reasonable. Accordingly, the court of appeals showed "great deference to the interpretation given * * * the statute by the officers or agency charged with its administration" (*Udall* v. *Tallman*, 380 U.S. 1, 16), and sustained the Board's interpretation because it was "reasonable and not contrary to the discernible intent of Congress * * *." (Pet. App. 8a-9a.)

Petitioners claim that this rule of statutory construction should not apply to the interpretation of "sons or daughters" in the Immigration and Nationality Act because these terms are not ambiguous. However, as the court of appeals explained (Pet. App. 7a), an ambiguity arises here "from

the absence of explicit legislative history as to the purpose of the deletion" of the 1959 definition.[4]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1975.

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[4]Nor is the decision below contrary to *Woodward* v. *United States*, 341 U.S. 112; *Carpenter* v. *United States*, 168 F.2d 369 (C.A. 3); or *Baskin* v. *Montedonico*, 115 F.2d 837 (C.A. 6), as petitioners claim. *Woodward* and *Carpenter* held that a family relative by adoption was an eligible beneficiary under the terms of the National Service Life Insurance Act (54 Stat. 1008, 1010). The decisions in those cases thus turned on the specific language, purpose and legislative history of that Act, which is different from the Immigration and Nationality Act at issue here. *Baskin* involved the unrelated question whether a federal court sitting in Tennessee erred by declining to give full faith and credit to the judgment of a Florida state court.